Supreme Court of the United States

..... Term, ...

No. .....

PAMPANGA SUGAR MILLS,
Petitioner,

VERSUS

WENCESLAO TRINIDAD,
as Collector of Internal Revenue
of the Philippine Islands,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

TABLE OF CONTENTS

Page

CAPTION AND TITLE 1

PROCEEDINGS IN THE COURT OF FIRST INSTANCE

Complaint 1

Defendant's Answer 22

Plaintiff's Reply to Defendant's Answer.. 23

Stipulation of Facts 24

Stipulation for holding decision in abeyance 30
Decision 32
Exception and Motion for New Trial.... 42
Exception and Notice of Appeal 43
PROCEEDINGS IN THE SUPREME COURT
Assignment of Errors 44
Decision 47
Concurring Opinion *pro hac vice* (JOHNSON, *J.*) 62
Dissenting Opinion (VILLAMOR, *J.*)..... 65
Dissenting Opinion (AVANCEÑA, *C. J.*, and JOHNS, *J.*) 65
Final Judgment dated February 13, 1928. 72
Exception and Notice of Appeal 74
Order of February 14, 1928 76
Clerk's Certificate 77
Order allowing certiorari 78

United States of America
Philippine Islands

G. R. No. 23985

PAMPANGA SUGAR MILLS,
Plaintiff-Appellant,

VERSUS

WENCESLAO TRINIDAD, Collector of Internal Revenue for the Philippine Islands,
Defendant-Appellee.

(ON APPEAL FROM THE COURT OF FIRST INSTANCE OF MANILA)

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On September 14, 1922, there was filed in Branch III of the Court of First Instance of Manila, Ninth Judicial District, the following complaint:

(HEADING AND TITLE)

COMPLAINT.

A

Comes now the plaintiff and for cause of action against the defendant alleges:

I

That plaintiff now is, and at all times hereinafter mentioned has been, a corporation organized and existing under the laws of the Philippine Islands, maintaining an office therein in the City of Manila. That the defendant, Wenceslao Trinidad is now, and from the first day of July, 1920, has been the duly appointed and acting Collector of Internal Revenue for the Philippine Islands.

II

That plaintiff now is, and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, Philippine Islands, and as such owner and operator, engaged in the production of raw centrifugal sugar from sugar cane delivered to it by the growers thereof.

III

That plaintiff and the growers of sugar-cane delivered to plaintiff from July 1, 1920, up to and including June 30, 1922, were parties to certain so-called milling contracts whereby the plaintiff received compensation

in sugar in return for which it ground and milled the sugar-cane so delivered.

IV.

That during the third quarter of the year 1920, from July 1, 1920, to and including September 30, 1920, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Two Million and Fifty-nine Thousand Eight Hundred Ninety-seven and 00/100 (2,059,897.00) Pesos, Philippine currency.

V.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid

selling price of said sugar, to-wit: the sum of Twenty Thousand Five Hundred Ninety-eight and 97/100 (20,598.97) Pesos, Philippine Currency.

VI

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 18th day of October, 1920, pay to the defendant, Wenceslao Trinidad, the sum of Twenty Thousand Five Hundred Ninety-eight and 97/100 (₱20,598.97) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

VII

That plaintiff has demanded of the defendant the return of the said sum of Twenty Thousand Five Hundred Ninety-eight and 97/100 (₱20,598.97) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, and the whole amount is now due and owing.

B

FOR A SECOND CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

VIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

IX.

That during the fourth quarter of the year 1920, from October 1, 1920, to and including December 31, 1920, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Ninety-one Thousand Six Hundred Eight and 00/100 (₱91,608.00) Pesos, Philippine currency.

X.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of

Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to wit: the sum of Nine Hundred Sixteen and 08/100 (₱916.08) Pesos, Philippine Currency.

XI

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of January, 1921, pay to the defendant, Wenceslao Trinidad, the sum of Nine Hundred Sixteen and 08/100 (₱916.08) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XII.

That plaintiff has demanded of the defendant the return of the said sum of Nine

Hundred Sixteen and 08/100 (₱916.08) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

C

FOR A THIRD CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of the complaint, and further alleges:

XIV.

That during the first quarter of the year 1921, from January 1, 1921, to and including March 31, 1921, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Five Hundred Forty Thousand and Sixty-six and 00/100 (₱540,066.00) Pesos, Philippine currency.

XV

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to-wit: the sum of Five Thousand Four Hundred and 66/100 (₱5,400.66) Pesos, Philippine currency.

XVI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th of April 1921, pay to the defendant, Wenceslao Trinidad, the sum of Five Thousand Four Hundred and 66/100 (₱5,400.66) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XVII.

That plaintiff has demanded of the defendant the return of the said sum of Five Thousand Four Hundred and 66/100 (₱5,400.66) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, and the whole amount is now due and owing.

D

FOR A FOURTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XVIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XIX.

That during the second quarter of the year 1921, from April 1, 1921, to and including June 30, 1921, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph

numbered III of this complaint, the value of which was One Million Three Hundred Eighty-eight Thousand Eleven and 00/100 (₱1,388,011.00) Pesos, Philippine Currency.

XX.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plantiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to-wit: the sum of Thirteen Thousand Eight Hundred Eighty and 11/100 (₱ 13,880.11) Pesos, Philippine Currency.

XXI.

That the plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of July, 1921, pay to the defendant, Wenceslao Trinidad, the sum of Thirteen Thousand Eight

Hundred Eighty and 11/100 (₱13,880.11) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXII.

That plaintiff has demanded of the defendant the return of the said sum of Thirteen Thousand Eight Hundred Eighty and 11/100 (₱13,880.11) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing:

E

FOR A FIFTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXIV.

That during the third quarter of the year 1921, from July 1, 1921, to and including September 30, 1921, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Four Hundred Fifty Thousand Six Hundred Ninety-eight and 00/100 (₱450,698.00) Pesos, Philippine currency.

XXV.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to-wit: the sum of Four Thousand Five Hun-

dred Six and 98/100 (₱4,506.98) Pesos, Philippine currency.

XXVI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of October, 1921, pay to the defendant, Wenceslao Trinidad, the sum of Four Thousand Five Hundred Six and 98/100 (₱4,506.98) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXVII.

That the plaintiff has demanded of the defendant the return of the said sum of Four Thousand Five Hundred Six and 98/100 (₱4,506.98) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff, and the whole amount is now due and owing.

F

FOR A SIXTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXVIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXIX.

That during the fourth quarter of the year 1921, from October 1, 1921, to and including December 31, 1921, the plaintiff received as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, raw centrifugal sugar valued at One Hundred Twelve Thousand Seven Hundred Sixty-one and 00/100 (₱112,761.00) Pesos, Philippine currency.

XXX

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of Section 1462

of Act 2711 of the Philippine Legislature, treated the value of the plaintiff's share of the raw centrifugal sugar produced, as aforesaid, as gross receipts, and demanded of plaintiff and did levy and assess against plaintiff a tax of one per centum (1%) on the aforesaid value of said sugar, to-wit: the sum of One Thousand One Hundred Twenty-seven and 61/100 (₱1,127.61) Pesos, Philippine currency.

XXXI

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of January, 1922, pay to the defendant, Wenceslao Trinidad, as Collector of Internal Revenue, the sum of One Thousand One Hundred Twenty-seven and 61/100 (₱1,127.61) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXXII.

That plaintiff has demanded of the defendant the return of said sum of One Thousand One Hundred Twenty-seven and 61/100

(₱1,127.61) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

G

FOR A SEVENTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXXIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXXIV.

That during the first quarter of the year 1922, from January 1, 1922, to and including March 31, 1922, the plaintiff received as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, raw centrifugal sugar valued at Six Hundred Sixteen Thousand Five Hundred Seven and 00/100 (₱616,507.00) Pesos, Philippine currency.

XXXV.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of Section 1462 of Act 2711 of the Philippine Legislature, treated the value of plaintiff's share of the raw centrifugal sugar produced, as aforesaid, as gross receipts, and demanded of plaintiff and did levy and assess against plaintiff a tax of one per centum (1%) on the aforesaid value of said sugar, to-wit: the sum of Six Thousand One Hundred Sixty-five and 07/100 (₱6,165.07) Pesos, Philippine currency.

XXXVI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 19th day of April, 1922, pay to the defendant, Wenceslao Trinidad, as Collector of Internal Revenue, the sum of Six Thousand One Hundred Sixty-five and 07/100 (₱6,165.07) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXXVII.

That plaintiff has demanded of the defendant the return of said sum of Six Thousand One Hundred Sixty- five and 07/100 (P 6,165.07) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

H

FOR AN EIGHTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXXVIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXXIX.

That during the second quarter of the year 1922, from April 1922, to and including June 30, 1922, the plaintiff received as compensation under the terms of the so-called milling contracts referred to in paragraph

numbered III of this complaint, raw centrifugal sugar valued at Eight Hundred Thirty-one Thousand Five Hundred Ninety-four and 00/100 (₱ 831,594.00) Pesos, Philippine currency.

XL.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of Section 1462 of Act 2711 of the Philippine Legislature, treated the value of plaintiff's share of the raw centrifugal sugar produced, as aforesaid, as gross receipts, and demanded of plaintiff and did levy and assess against plaintiff a tax of one per centum (1%) on the aforesaid value of said sugar, to wit: the sum of Eight Thousand Three Hundred Fifteen and 94/100 (₱ 8,315.94) Pesos Philippine currency.

XLI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 13th day of July, 1922, pay to the defendant, Wenceslao Trinidad, as Collector of Internal Revenue, the sum of Eight Thousand Three Hundred Fif-

teen and 94/100 (₱ 8,315.94) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XLII.

That plaintiff has demanded of the defendant the return of said sum of Eight Thousand Three Hundred Fifteen and 94/100 (₱ 8,315.94) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

WHEREFORE, the plaintiff prays that judgment be rendered against the defendant for the sum of Sixty Thousand Nine Hundred Eleven and 42/100 (₱60,911.42) Pesos Philippine currency, with legal interest on:

Twenty Thousand Five Hundred Ninety-eight and 97/100 (₱ 20,598.97) Pesos, from October 18, 1920;

Nine Hundred Sixteen and 08/100 (₱916.08) Pesos from January 20, 1921;

Five Thousand Four Hundred and

66/100 (₱5,400.66) Pesos, from April 20, 1921;

Thirteen Thousand Eight Hundred Eighty and 11/1000 (₱13,880.11) Pesos, from July 20, 1921;

Four Thousand Five Hundred Six and 98/100 (₱4,506.98) Pesos, from October 20, 1921;

One Thousand One Hundred Twenty-seven and 61/100 (₱ 1,127.61) Pesos from January 20, 1922;

Six Thousand One Hundred Sixty-five and 07/100 (₱6,165.07) Pesos from April 19, 1922; and

Eight Thousand Three Hundred Fifteen and 94/100 (₱8,315.94) Pesos, from July 13, 1922,

until paid, together with the costs of this action, and for such other and further relief as to this Court may appear right and proper.

Manila, P. I., September 14, 1922.

(Sgd.) JOSE YULO
Attorney for Plaintiff,
508 Chaco Building,
Manila, P. I.

On October 10, 1922, the defendant, by and thru the Attorney General of the Philippine Islands, filed the following answer:

(HEADING AND TITLE)

ANSWER.

Comes now the defendant and in answer to the plaintiff's complaint avers:

That he admits all the allegations contained in each and every paragraph of the complaint.

As special defense, the defendant alleges:

1. That plaintiff is not the owner of the land where the cane ground by it was grown.

2. That the plaintiff in grinding, milling and converting into sugar the cane delivered to it by the planters and selling its share of sugar produced acted as a manufacturer, and consequently, the proceeds of the sale of said sugar was subject to tax under the provisions of Section 1459 of the Administrative Code; and

3. That the tax collected from the plaintiff was legally due from it as manufacturer under the provisions of the above-mentioned section of the Administrative Code.

WHEREFORE, the defendant prays

that he be absolved from the complaint with costs against the plaintiff.

Manila October 10,1922.

(Sgd.) ANT. VILLA-REAL
Attorney-General.

On October 20, 1922, the plaintiff, by its attorney, filed the following reply to defendant's answer:

(HEADING AND TITLE)

REPLY TO DEFENDANT'S ANSWER

Now comes the plaintiff in the above entitled cause by its undersigned attorney and in reply to defendant's answer and special defense, alleges:

That it denies each and every allegation contained in each and every paragraph of the special defense contained in defendant's answer.

WHEREFORE, plaintiff prays that defendant's special defense be discarded.

Manila, P. I. October 20, 1922.

JOSE YULO
(Sgd.) BY SIMON R. CRUZ
Attorney for Plaintiff,
325 *Pacific Building, Manila.*

Under date of September 15, 1924, the plaintiff and the defendant by their respective attorneys, filed the following stipulation covering agreed statements of facts:

(HEADING AND TITLE)

STIPULATION COVERING AGREED STATEMENTS OF FACTS

Now comes the plaintiff, Pampanga Sugar Mills, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, thru their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts covering the issues involved in the present proceeding, to-wit:

I.

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands and having its principal office therein in the City of Manila, and that the defendant was, at all times hereinafter mentioned and at the time of the inception of these proceedings, the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

II.

The plaintiff is and at all times hereinafter mentioned, has been the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.

III.

That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff, and delivered to it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

IV.

That during the times hereinafter set forth, plaintiff received as its share in the milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales

values of which upon being sold by plaintiff were as follows:

(a) During the third quarter of the year 1920, that is, from July 1, 1920, to and including September 30, 1920	₱2,059,897.00
(b) During the fourth quarter of the year 1920, that is, from October 1, 1920 to and including December 31, 1920	91,608.00
(c) During the first quarter of the year 1921, that is, from January 1, 1921, to and including March 31, 1921	540,066.00
(d) During the second quarter of the year 1921, that is, from April 1, 1921 to and including June 30, 1921 ..	1,388,011.00
(e) During the third quarter of the year 1921, that is, from July 1, 1921 to and including September 30, 1921	450,698.00
(f) During the fourth quarter	

of the year 1921, that is, from October 1, 1921, to and including December 31, 1921	112,761.00
(g) During the first quarter of the year 1922, that is, from January 1, 1922, to and including March 31, 1922	616,507.00
(h) During the second quarter of the year 1922, that is, from April 1, 1922, to and including June 30, 1922 ..	831,594.00

V.

That the defendant, claiming to act under the authority of Section 1459 of Act 2711 known as the Administrative Code of 1917, levied and assessed against the plaintiff a percentage tax of one per centum (1%) on the aforesaid sales values of said raw sugar as follows:

(a) 1% of	₱2,059,897.00	₱20,598.97
(b) 1% of	91,608.00	916.08
(c) 1% of	540,066.00	5,400.66
(d) 1% of	1,388,011.00	13,880.11
(e) 1% of	450,698.00	4,506.98

(f) 1% of	112,761.00	1,127.61
(g) 1% of	616,507.00	6,165.07
(h) 1% of	831,594.00	8,315.94

and plaintiff in order to avoid the exaction of penalties for non-payment of the tax, involuntarily and under protest did pay to the defendant in due time all the amounts above specified, making in all the total sum of P60,911.42, Philippine currency.

VI.

That plaintiff duly filed its protests against the payment of all of the aforesaid taxes on the grounds that said taxes were illegal and that plaintiff was exempted therefrom by the terms of Section 1460 of Act 2711 commonly known as the Administrative Code of 1917.

VII.

That the defendant overruled and denied the aforesaid protests of plaintiff and refused, on demand, and still persists in refusing to return to plaintiff the total amount of said taxes, or any part thereof.

VIII.

That thereupon, on the 14th day of September, 1922, plaintiff filed its complaint

herein, that on the 11th day of October, 1922, the defendant filed his answer to said complaint, admitting all the allegations contained in said complaint, but setting up as special defense the fact that plaintiff is not the owner of the land where the cane ground by it was grown, and that plaintiff in grinding said cane was a manufacturer and as such was subject to tax under section 1459 of Act No. 2711, known as the Administrative Code of 1917; whereupon this cause being at issue, the parties have stipulated and agreed to submit this cause for decision upon the within stipulation on an agreed statement of facts.

Manila, P. I., September 15, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

(Sgd.) ATTORNEY-GENERAL,
Attorney for the Defendant,
Manila.

Under date of November 7, 1924, the plaintiff and the defendant by their respective attorneys, filed the following stipulation:

(HEADING AND TITLE)

STIPULATION.

Now come the parties to the above entitled cause by their undersigned attorneys, and, with leave of this Court first had and obtained, hereby stipulate and agree that the issues presented in this case being similar to those involved in the case now pending decision before the Supreme Court of the Philippine Islands, entitled CENTRAL AZUCARERA DE BAIS v. WENCESLAO TRINIDAD, R. G. No. 21490, and the said case having been submitted already for decision, decision of this case be held in abeyance until after the decision of the Supreme Court in the above-mentioned case has been promulgated.

Manila, November 7, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

(Sgd.) ATTORNEY-GENERAL,
Attorney for the Defendant,
Manila.

Under date of November 24, 1924, the plaintiff by its undersigned attorneys, filed the following memorandum for plaintiff:

(HEADING AND TITLE)

MEMORANDUM FOR PLAINTIFF

Comes now the plaintiff in the above-entitled cause and respectfully represents to this Court that the decision of the Supreme Court in the case entitled "Central Azucarera de Bais—vs.—Wenceslao Trinidad", R. G. No. 21490, has not yet become final and that a motion for reconsideration is now in process of preparation to be submitted to the Supreme Court.

WHEREFORE, plaintiff prays that decision of this case be held in abeyance until the decision in said case has duly become final.

Manila, Philippine Islands, November 24, 1924.

PAREDES, BUENCAMINO & YULO
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

Under date of January 5, 1925, the lower Court rendered its decision as follows:

(HEADING AND TITLE)

D E C I S I O N

This is an action in which plaintiff, by eight causes of action, seeks to recover back from the defendant various sums of money, aggregating P60,911.42 paid by plaintiff under protest as percentage taxes as a manufacturer under Section 1459 of Act No. 2711, known as the Administrative Code.

The answer admits all the allegations of the complaint, and as a special defense defendant alleges that plaintiff is not the owner of the land where the cane ground by it was grown; that plaintiff in grinding, milling and converting into sugar the cane delivered to it by the planters and selling its share of sugar produced, acted as manufacturer, and, consequently, the proceeds of the sale of said sugar was subject to tax under the provisions of section 1459 of the Administrative Code, and that the tax collected from plaintiff was legally due from it as manufacturer under the provisions of said section of the Administrative Code.

On October 6, 1924, the parties filed the following:

STIPULATION COVERING AGREED STATEMENT OF FACTS.

Now come the plaintiff, Pampanga Sugar Mills, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, thru their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts covering the issues involved in the present proceeding, to-wit:

I.

"That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, and having its principal office therein in the City of Manila, and that the defendant was, at all times hereinafter mentioned and at the time of the inception of these proceedings, the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

II.

"That plaintiff is, and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.

III.

"That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff and delivered to it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

IV.

"That during the times hereinafter set forth, plaintiff received as its

share in the milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales values of which upon being sold by plaintiff were as follows:

(a) During the third quarter of the year 1920, that is, from July 1, 1920, to and including September 30, 1920	₱2,059,897.00
(b) During the fourth quarter of the year 1920, that is, from October 1, 1920 to and including December 31, 1920,	91,608.00
(c) During the first quarter of the year 1921, that is, from January 1, 1921 to and including March 31, 1921	540,066.00
(d) During the second quarter of the year 1921, that is, from April 1, 1921, to and including June 30, 1921	1,388,011.00
(e) During the third quarter of the year 1921, that is, from July 1, 1921 to and including September 30, 1921	450,698.00

(f) During the fourth quarter of the year 1921, that is, from October 1, 1921, to and including December 31, 1921	112,761.00
(g) During the first quarter of the year 1922, that is, from January 1, 1922, to and including March 31, 1922	616,507.00
(h) During the second quarter of the year 1922, that is, from April 1, 1922, to and including June 30, 1922 ..	831,594.00

V

"That the defendant, claiming to act under the authority of Section 1459 of Act 2711 known as the Administrative Code of 1917, levied and assessed against the plaintiff a percentage tax of one per centum (1%) on the aforesaid sales value of said raw sugar as follows:

(a) 1% of	₱2,059,897.00	₱20,598.97
(b) 1% of	91,608.00	916.08
(c) 1% of	540,066.00	5,400.66
(d) 1% of	1,388,011.00	13,880.11

(e) 1% of	450,698.00	4,506.98
(f) 1% of	112,761.00	1,127.61
(g) 1% of	616,507.00	6,165.07
(h) 1% of	831,594.00	8,315.94

and plaintiff in order to avoid the exaction of penalties for non-payment of the tax, involuntarily and under protest did pay to the defendant in due time all the amounts above specified, making in all the total sum of ₱60,911.42, Philippine currency.

VI.

"That plaintiff duly filed its protests against the payment of all of the aforesaid taxes on the grounds that said taxes were illegal and that plaintiff was exempted therefrom by the terms of Section 1460 of Act 2711 commonly known as the Administrative Code of 1917.

VII.

"That the defendant overruled and denied the aforesaid protest of plaintiff and refused, on demand, and still persists in refusing to return to plain-

tiff the total amount of said taxes, or any part thereof.

VIII.

"That thereupon, on the 14th day of September, 1922, plaintiff filed its complaint herein; that on the 11th day of October, 1922, the defendant filed his answer to said complaint, admitting all the allegations contained in said complaint, but setting up as special defense the fact that plaintiff is not the owner of the land where the cane ground by it was grown, and that plaintiff in grinding said cane was a manufacturer and as such was subject to tax under section 1459 of Act No. 2711, known as the Administrative Code of 1917; whereupon this cause being at issue, the parties have stipulated and agreed to submit this cause for decision upon the within stipulation on an agreed statement of facts.

Manila, P. I., September 15, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

(Sgd.) ANTONIO VILLA-REAL,
Attorney-General,
Attorney for the Defendant."

On November 8, 1924, the parties also filed the following:

"*STIPULATION*

"Now come the parties to the above entitled cause by their undersigned attorneys and, with leave of this Court first had and obtained, hereby stipulate and agree that the issues presented in this case being similar to those involved in the case now pending decision before the Supreme Court of the Philippine Islands, entitled CENTRAL AZUCARERA DE BAIS v. WENCESLAO TRINIDAD, R. G. Number 21490, and the said case having been submitted already for decision, decision

of this case be held in abeyance until after the decision of the Supreme Court in the above-mentioned case has been promulgated.

Manila, November 7, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila,

(Sgd.) ANTONIO VILLA-REAL,
Attorney-General,
Attorney for the Defendant,
Manila."

A copy of the decision of the Supreme Court in the case referred to in said stipulation has been filed in this case, and from it the following extracts are copied:

> "This is an action to recover back merchants' percentage taxes collected from the plaintiff on consignment abroad under section 1459 of Act No. 2711, the Administrative Code of 1917, the defendant contending that the plaintiff is a 'manufacturer' within the meaning of that section."

After stating the facts the Supreme Court said:

> "The court below held that the plaintiff was not a manufacturer within the letter and the spirit of said section 1459 and rendered judgment in favor of said plaintiff for recovery back of the sum of ₱24,859.99, without interest and costs. From this judgment the defendant appealed to this court.
>
> "The decision of the case turns upon the determination of two questions: (1) Whether the plaintiff is a manufacturer in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code, and (2) whether the plaintiff is entitled to the exemption provided for in subsection (b) of section 1460 of the same Code".

The Supreme Court stated its conclusion as follows:

> "From what has been said it follows that the percentage tax on the consignment in question was legally collected and that the judgment of the court below must be reversed.

In accordance with said decision of the Supreme Court upon the same question it is hereby ordered that judgment be entered in this case dismissing plaintiff's complaint and absolving defendant from the demands of plaintiff, with the costs against plaintiff.

IT IS SO ORDERED.

Manila, P. I., January 5, 1925.

(Sgd.) GEO. R. HARVEY,
Judge.

Under date of February 4, 1925, plaintiff filed the following exception and motion for a new trial:

(HEADING AND TITLE)

EXCEPTION AND MOTION FOR A NEW TRIAL.

Now comes the plaintiff by its undersigned attorneys and excepts to the decision rendered in the above-entitled case on the 5th of January, 1925, dismissing the complaint with costs against the plaintiff, and respectfully moves this Court to set aside the said judgment and grant a new trial of said action for the following reasons:

1. That the evidence presented does not justify the decision;

2. That the decision is contrary to law.

Manila, Philippine Islands, February 4, 1925.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

Plaintiff's motion for new trial having been denied on February 7, 1925, and its counsel having been notified of such denial on February 10, 1925, the following exception and notice of appeal was filed:

(HEADING AND TITLE)

EXCEPTION AND NOTICE OF APPEAL

Comes now the plaintiff by its undersigned attorneys, and to this Honorable Court respectfully states:

1. That on February 10, 1925, plaintiff received notice of the order of this Honorable Court under date of February 9, 1925, denying plaintiff's motion for a new trial, and hereby excepts thereto.

2. That plaintiff appeals from the decision to the Supreme Court and announces its intention to file the requisite bill of exceptions.

Manila, Philippine Islands, February 14, 1925.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

Thereafter, to wit, on March 25, 1925, the corresponding Bill of Exceptions, together with the documentary evidence, was received in the Office of the Clerk of the Supreme Court.

On March 30, 1925, the case was duly registered under No. 23985 of the General Register of the Supreme Court.

On June 22, 1925, counsel for plaintiff and appellant filed their brief, assigning the following errors:

ERROR No. 1

***The lower court erred** in holding that **plaintiff is a manufacturer** in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code of 1917.*

ERROR No. 2

The lower court erred in holding that plaintiff is not entitled to the exemption provided for in section 1460, paragraph B of the same Code.

ERROR No. 3

The lower court erred in dismissing plaintiff's complaint with costs against it.

On August 4, 1925, counsel for the defendant and appellee filed his brief therein.

On October 15, 1925, the case was argued and submitted to the Supreme Court.

On December 18, 1925, the following order was issued:

> "The Court being unable to arrive at decision by the vote required by law in the case of Pampanga Sugar Mills vs. Wenceslao Trinidad, Collector of Internal Revenue for the Philippine Islands, R. G. No. 23985, it is the order of the Court that same be taken off of the calendar in which it now appears and assigned anew in the July, 1926 calendar for rehearing."

On July 12, 1926, the Court entered the following order:

> "Considering the motion of the attorneys for the plaintiff and appellant in case R. G. No. 23985, Pampanga Sugar Mills vs. Wenceslao Trinidad etc., praying, for the reasons given, that the rehearing of said case be postponed and that the case be decided by a full Court, MOTION GRANTED, and let said case be stricken from the July calendar and Clerk is instructed to report the matter again to the Court at its first opportunity."

On October 23, 1926, the Court instructed the Clerk to include the said case in the calendar to be called in November next.

On November 22, 1926, the case was reargued and submitted for the second time.

On October 5, 1927, the Court, not having come to a decision, issued the following order:

> "The Court ordered that case R. G. No. 23985, Pampanga Sugar Mills vs. Wenceslao Trinidad, Collector of Internal Revenue for the Philippine Islands, be set for oral argument on October 15, 1927, at 9:00 o'clock A. M."

On October 15, 1927, the case was finally submitted to the Supreme Court of the Philippine Islands for decision on the merits.

On February 2, 1928, the said Supreme Court rendered its decision in the case, which said decision is in words and figures following to wit:

D E C I S I O N

OSTRAND, *J.*:

Upon eight causes of action, the plaintiff corporation seeks to recover back from the defendant Collector of Internal Revenue the total sum of P60,911.42 paid by it as merchant's percentage taxes under Sec. 1459 of the Administrative Code of 1917.

The case was submitted to the Court of First Instance for decision on the following agreed statement of facts:

> "Now come the plaintiff, Pampanga Sugar Mills, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, thru their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts covering the issues involved in the present proceeding, to wit:
>
> "1.—That the plaintiff is a corporation

duly organized and existing under and by virtue of the laws of the Philippine Islands, and having its principal office therein in the City of Manila, and that the defendant was, at all times hereinafter mentioned and at the time of the inception of these proceedings, the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

"2.—That plaintiff is and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.

"3.—That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff and delivered to it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar, and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

"4.—That during the times hereinafter set forth, plaintiff received as its share in the

milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales values of which upon being sold by plaintiff were as follows:

(a) During the third quarter of the year 1920, that is, from July 1, 1920, to and including September 30, 1920	₱2,059,897.00
(b) During the fourth quarter of the year 1920, that is, from October 1, 1920, to and including December 31, 1920	91,608.00
(c) During the first quarter of the year 1921, that is, from January 1, 1921, to and including March 31, 1921 ..	540,066.00
(d) During the second quarter of the year 1921, that is, from April 1, 1921, to and including June 30, 1921 ..	1,388,011.00
(e) During the third quarter of the year 1921, that is, from July 1, 1921, to and including September 30, 1921	450,698.00

(f) During the fourth quarter of the year 1921, that is, from October 1, 1921, to and including December 31, 1921	112,761.00
(g) During the first quarter of the year 1922, that is, from January 1, 1922, to and including March 31, 1922	616,507.00
(h) During the second quarter of the year 1922, that is, from April 1, 1922, to and including June 30, 1922 ..	831,594.00

"5.—That the defendant, claiming to act under the authority of Section 1459 of Act 2711 known as the Administrative Code of 1917, levied and assessed against the plaintiff a percentage tax of one per centum (1%) on the aforesaid sales values of said raw sugar as follows:

(a) 1% of	₱2,059,897.00	₱20,598.97
(b) 1% of	91,608.00	916.08
(c) 1% of	540,066.00	5,400.66
(d) 1% of	1,388,011.00	13,880.11
(e) 1% of	450,698.00	4,506.98
(f) 1% of	112,761.00	1,127.61

(g) 1% of	616,507.00	6,165.07
(h) 1% of	831,594.00	8,315.94

And plaintiff in order to avoid the exaction of penalties for nonpayment of the tax, involuntarily and under protest did pay to the defendant in due time all the amounts above specified, making in all the total sum of ₱60,911.42, Philippine Currency.

"6.—That plaintiff duly filed its protests against the payment of all of the aforesaid taxes on the grounds that said taxes were illegal and that plaintiff was exempt therefrom by the terms of Section 1460 of Act 2711 commonly known as the Administrative Code of 1917.

"7.—That the defendant overruled and denied the aforesaid protests of plaintiff and refused, on demand, and still persists in refusing to return to plaintiff the total amount of said taxes, or any part thereof.

"8.—That thereupon, on the 14th day of September, 1922, plaintiff filed its complaint herein; that on the 11th day of October, 1922, the defendant filed his answer to said complaint, admitting all the allegations contained in said complaint, but setting up as special defense the fact that plaintiff is not the own-

er of the land where the cane ground by it was grown, and that plaintiff in grinding said cane was a manufacturer and as such was subject to tax under section 1459 of Act No. 2711, known as the Administrative Code of 1917; whereupon this cause being at issue, the parties have stipulated and agreed to submit this cause for decision upon the within stipulation on an agreed statement of facts."

The court below held that the facts stipulated were practically identical with those agreed upon in the case of Central Azucarera de Bais vs. Wenceslao Trinidad (46 Phil., 492) and, in accordance with our decision in that case, rendered judgment in favor of the defendant and dismissed the plaintiff's complaint.

Upon appeal to this court by the plaintiff, counsel makes the following assignments of error:

"1.—The lower court erred in holding that plaintiff is a manufacturer in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code of 1917.

"2.—The lower court erred in holding that plaintiff is not entitled to the exemption provided for in section 1460 paragraph B of the same code."

Section 1459 reads as follows: "Percentage tax on merchants' sales—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

"The following shall be exempt from this tax:

"(a) Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sales do not exceed two hundred pesos.

"(b) Peddlers and sellers at fixed stands of fruit, produce, and food, raw or otherwise, the total selling value whereof does not exceed three pesos per day and who do not renew their stock oftener than once every twenty-four hours.

"(c) Producers of commodities of all classes working in their own homes, consisting

of parents and children living as one family, when the value of each day's production by each person capable of working is not in excess of one peso.

"'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production, and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

The pertinent part of Sec. 1460 reads as follows:

"In computing the tax above imposed, transactions in the following commodities shall be excluded:

• • • • •

"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state or not."

The question as to whether a sugar central functioning under milling contracts with the planters should be regarded as a merchant under Sec. 1459 has been the subject of much discussion, and several theories in regard thereto have been advanced. At first it was thought that such sugar centrals should be considered contractors under Sec. 1462 of the Administrative Code, but this theory was rejected by our decision in the case of La Carlota Sugar Central vs. Trinidad, 43 Phil., 816. That case was without doubt correctly decided, but the decision contained certain expressions which afterwards led to the contention that the relation between the sugar centrals and the planters is that of partners in the production of sugar; that sugar is an agricultural product; and that consequently both the planters and the sugar centrals are, under Subsection (b) of Sec. 1460 exempt from the percentage sales tax. The weakness of this contention is that no consideration is given to the distinction between the production of the raw material, sugar cane, and the manufacture of the finished product, centrifugal sugar. This distinction is well brought out in the case of Allen vs. Smith, 173, U. S. 389, in which the United States Supreme Court says:

> "It is quite evident that Allen himself was not the producer of the sugar. He plant-

ed the crop of cane upon his own plantation. He had given notice and a bond to the Commissioner of Internal Revenue, and had applied for a license; but he had done nothing toward the production of the sugar at the time of his death beyond raising the cane, which certainly would not have entitled him to be considered a producer of the sugar. The 'producer' does not differ essentially in its legal aspects from the word 'manufacturer', except that it is more commonly used to denote a person who raises agricultural crops and puts them in a condition for the market. In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product. In a number of cases arising in this court under the revenue laws, it is said that the word 'manufacture' is ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. That such product is often the result of several processes, each one of which is a separate distinct manufacture, and usually receives a separate name; or, as stated in Tide Water Oil Co. vs. United States, 171 U. S. 210, 216: 'Raw materials may be and often are subjected to successive processes of manufacture, each one of

which is complete in itself, and several of which may be required to make the final product. Thus logs are first manufactured into boards, planks, joists, scantling, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, window sashes, trimmings and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name.' *So the one who raises the cane is undoubtedly entitled to be considered the producer of the cane, but he is not the producer of the sugar. That appellation is reserved for him who turns out the finished product.*" (The italic are ours.)

Though the decision in the case of Allen vs. Smith related to bounties for the production of sugar under the tariff act of October 1, 1890, and not to a tax, the underlying principle is the same and the foregoing quotation applies with full force to the question here at issue; the planting and production of sugar cane is one thing and the manufacture or production of sugar is another thing.

In the present case we have this situation: Section 1459 of the Administrative Code imposes a tax of one percent on sales by manufacturers of "articles of their own production." Section 1460 of the same code provides that "Agricultural products when sold by the producer or owner of the land where grown" shall, in computing the tax, be excluded. The plaintiff sold large quantities of sugar for its own account and admits that it is engaged in the production of centrifugal sugar and that the sugar in question was manufactured or milled by it from sugar cane not grown on its own land. It further admits that it manufactured the sugar under a pre-existing so-called milling contract whereby it was to receive one-half of the resulting centrifugal sugar, the other half going to the growers of the cane. The plaintiff does not pretend to be other than a manufacturer of sugar and admits that the cane from which the sugar was produced belonged to the cane-growers or planters. On the other hand, the planters do not claim to have had anything to do with the manufacture of the sugar as distinguished from the production of the cane, nor is it even suggested that they had any control whatever over the manufacturing processes subsequent to the delivery of the cane. In a certain sense the central and the planters may, perhaps, be said to have co-operated with each other

but such co-operation possesses none of the essential elements of a partnership.

Upon the law and facts stated, the defendant Collector of Internal Revenue held that the sugar received by the planters under the milling contract and sold by them or for their account, was exempt from the tax, but that the sugar received and sold by the plaintiff for its own account was its own manufacture from cane not grown on its own land and therefore was subject to the tax. Accordingly, no tax was collected on the sugar received by the planters, but the plaintiff was required to pay the tax on the sale of its own share. That is the tax the plaintiff now seeks to recover back.

Perhaps in realization of the weakness of the partnership theory, the argument is now advanced for the first time that inasmuch as it is admitted that the planters were the owners of the cane from which the sugar was produced, plaintiff received the cane merely as a bailment and did not acquire title to any part of the sugar until the milling processes were completed; that therefore the plaintiff in producing the sugar acted merely as the agent of the planters, and that consequently the sugar cannot be regarded as the plaintiff's own production.

This argument is clearly another misconception arising from the confusion of the production and ownership of the cane with the production or ma-

nufacture of the sugar. We are not here dealing with the legal title to the cane; that question might arise in actions between the planters and the Central, but has nothing to do with this case. The plaintiff admits that it manufactured its share of the sugar and sold it for its own account, and that the cane from which the sugar was manufactured was not grown on its own land. That is sufficient to justify the collection of the tax under the statute; there is nothing in the statute requiring the Government to inquire into the legal title to the raw materials from which the articles sold by the manufacturer are produced. It is further to be noted that it is not alleged in the complaint nor stated in the stipulation of facts that the plaintiff produced the sugar as an agent merely.

It may be conceded for the sake of the argument that the delivery of the cane to the plaintiff was a bailment. But if so, the bailment was coupled with the right on the part of the plaintiff to manufacture the cane into sugar of which it, under the pre-existing milling agreement, also had the right to appropriate to itself one-half. It therefore from the beginning of the milling had a direct individual interest in the finished product and to the extent of that interest it did the milling for itself; it held an undivided one-half share in the sugar to be produced, it manufactured the sugar pertaining to its share,

and it sold it for its own account. Notwithstanding their ownership of the cane, the planters at no time had the right to dispose of the plaintiff's share of the sugar, nor does it appear that they had any control over the milling of the cane. Surely, in these circumstances, the plaintiff corporation cannot be considered to have been merely the agent of the planters in the production of its own share of the sugar and, as we have already stated, it is only upon that share that the defendant has imposed the sales tax which the plaintiff now seeks to recover back; no tax has been collected on the share belonging to the planters.

The latest theory brought to the attention of the Court in connection with the matter under discussion, is that the extraction of the juice of sugar cane and its conversion into centrifugal sugar is not a manufacturing process. This idea is in direct conflict with the opinion of the United States Supreme Court in the case of Allen vs. Smith, *supra*, and none of the authorities cited in its support are in point.

The facts are undisputable that the plaintiff corporation, a manufacturer, produced its share of the sugar for its benefit and from cane grown on land other than its own; that it under its contracts had the legal right to mill the cane as soon as it was delivered to the central; and that it sold its share of the sugar for its own account. That is all there

is to the case and is all that is necessary to make the sales taxable under section 1459, *supra*.

The appealed judgment is in accordance with the law and the facts. It is therefore affirmed with the costs against the appellant.

Ten days after the promulgation of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

JAMES A. OSTRAND

WE CONCUR:

THOS. A. STREET
GEO. A. MALCOLM
NORBERTO ROMUALDEZ

Johnson, *J.*, concurs *pro hac vice* in separate opinion. Avanceña, *C. J.*, Villamor, *J.*, and Johns, *J.*, *dissent*.

JOHNSON, *J.*, concurring *pro hac vice*:

This action was commenced in the Court of First Instance of the city of Manila on the 14th day of September, 1922. It had its origin in the sugar crop of 1920. It has been pending decision in the

Supreme Court since 1925. It has been argued several times. There exists an *empate*. Considering the length of time since the beginning of the action, in relation with the fact that the Court stands equally divided, and in order to obtain a decision so that the defeated party may appeal to the Supreme Court of the United States and obtain an official decision upon the merits, I have decided to concur for that purpose *pro hac vice*.

I cannot give my consent, however, to the placing of a four-wheel brake upon the principal industry of the country. Sugar is not manufactured. It is simply extracted from the pulp of the sugar cane. The process of extraction is no more a process of manufacture of sugar, except in the machinery used for that purpose, than the making of rice from palay or the digging and hulling of peanuts, or that the coprax becomes a manufactured article by taking it by machinery from the coconut shell.

The plaintiff is a mere employee of the sugar growers. It is employed by them for the purpose of extracting the sugar from the sugar cane at a fixed price. The fact that it receives a portion of the sugar extracted, in lieu of a cash payment, does not make it a manufacturer of sugar. If it received a cash payment for its services, instead of a portion of the sugar, certainly it could not be held to be a manufacturer of sugar under the provisions of the

law applied. In the one case it received sugar for its services; in the other case it would receive cash. In the second case it is certainly not a manufacturer of the sugar upon which the revenue in the present case is attempted to be collected. Certainly no revenue could be collected in the second case upon the theory that it is a manufacturer. In the second case it would have no sugar to sell and therefore could not be considered a merchant.

Castle Bros. Wolf & Sons vs. McCoy, 21 P. R. 300

State vs. American Sugar Refg. Co., 51 La. An. 562

State vs. Eckendorf, 46 La. An. 131

Harttranft vs. Wiegman, 121 U. S. 609

Tidewater Oil Co. vs. U. S., 171 U. S. 210

City vs. Coffee Co., 45 La. An. 87

New Orleans vs. Mannessier, 32 La. An. 1075

United States Treasury Decisions Nos. 15404 and 17579

Kuenzle & Streiff vs. Collector of Customs, 32 P. R. 510

People vs. Roberts, 105 N. Y. 375.

My concurrence is simply *pro hac vice*.

E. FINLEY JOHNSON.

VILLAMOR, *J.*, dissenting:

With due respect for the majority opinion, I am compelled to sustain my dissent in the case of Central Azucarera de Bais *versus* Trinidad, 46 Phil. Rep., 515, considering the identity of the facts established in that case and those agreed upon in the present one.

IGNACIO VILLAMOR.

JOHNS, *J.*, dissenting:—

Again we are forced to dissent. As stated, this case was decided upon the stipulation of facts, of which the ones material to this dissent are as follows:

> "2.—That plaintiff is and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.
>
> "3.—That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff and delivered to it under so-called milling contracts, and as compensation for its services

in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar, and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

"4.—That during the times hereinafter set forth, plaintiff received as its share in the milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales values of which upon being sold by plaintiff were as follows:"

Then follows a detailed statement of the amount and value of the centrifugal sugar as stated in the majority opinion.

The decision of the lower court and the majority opinion in this Court are based upon the decision in Central Azucarera de Bais *vs.* Trinidad, 46 Phil., 492. That decision is predicated upon the following propositions:

"(1) That the sugar central in question is a manufacturer of sugar; (2) that all the sugar manufactured by the central comes from sugar cane delivered by sugar cane growers under milling contracts on a share-to-share basis; (3) that the said sugar central in effect buys its raw material and devotes itself exclusively to converting it into finished merchandise, paying for said raw

material with a share in the finished product instead of with money."

Between the two cases, there is this important distinction. Although under that decision plaintiff in the instant case might be construed as a manufacturer, yet, here, the agreed statement of facts further shows that all of the sugar manufactured by the plaintiff does not come from the planters under milling contracts, and that the milling of the cane in question was only incidental to the operation of plaintiff's mill, and that in legal effect, the plaintiff did not "purchase the cane from the planters, but simply renders to them services for which it is paid in sugar."

Analyzing the contracts between the plaintiff and the planters in the instant case and the stipulation of facts, we have this situation: The planters produced the cane in question which after its production was delivered to plaintiff's mill under a contract in and by which after the cane is made into the form of centrifugal sugar, after which the products are then divided, one-half of which goes to the planters and the other half to the plaintiff. That is to say, the cane itself is at all times the sole and exclusive property of the planters, and that the title to the cane and its products in the form of centrifugal sugar continues to exist and remains in the

planters, until after the cane is made by the plaintiff into the form of centrifugal sugar. When that is completed, a division of the products from the sugar cane in the form of centrifugal sugar is then made. Up to the time the division is actually made, the title to the cane and its products is vested solely and exclusively in the planters, a very important fact which was not decided by this court in the case of Central Azucarera de Bais *vs.* Trinidad, *supra*, and which does not appear from the stipulation of facts in that case.

As appears from the stipulation of facts in the instant case, the plaintiff did not and never did purchase the cane from the planters and never did acquire any right, title or interest in the products of the cane until after it was made into the form of centrifugal sugar and a division of it was then made on a fifty-fifty basis during all of which time, the title to the cane and its products continued to be and remain vested in the planters, an important and decisive point which was never passed upon or decided in the case of Central Azucarera de Bais *vs.* Trinidad, *supra*.

The majority opinion cites and is founded upon the case of Allen vs. Smith, 173, U. S., 389, from which a partial quotation is made. From an examination of that case, it will be found that the only question presented and decided in that case was as

to who was the producer of the sugar and entitled to the government bounty. The syllabus says·

> "1. Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized.
>
> "2. The manufacturer of the sugar, although not the producer of the cane, is entitled to the bounty given by the act of Congress of August 28, 1894, to producers and manufacturers who had complied with the provisions of the bounty law of 1890, which had been repealed."

In discussing that question, the opinion of the Supreme Court quotes the following language from the decision of the lower court:

> "But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed, she was the owner of the crop. She can well be considered,

as we think, the producer. We desire it to be well understood that, in our opinion, the bounty money is no part of the crop or proceeds of the crop. The question was: Who was the owner and producer of the crop after the death of the testator?"

And then says:

"Having thus determined that under the will of Mr. Allen she, through the executors, was entitled to all the proceeds of the manufacture of sugar in the sugar house, the court proceeded to take away from Mrs. Allen a part of these proceeds upon the theory that, by the act of Congress, the bounty was given, not to the manufacturer of the sugar, but to the producer of the cane. In doing this it necessarily took from Mrs. Allen a part of the bounty belonging to her as manufacturer of sugar under the act of Congress, and gave it to the legal heirs of Allen, because they had produced the cane from which the sugar had been manufactured."

And further says:

"The theory upon which the court did this is thus stated in the opinion: 'The end of the bounty was to encourage the production

of cane. It devolved upon us to determine by whom the cane was produced. In our judgment, after carefully reading the act, it is evident that the producer was to be the first to receive the benefit of the bounty.... The act (although it includes the manufacture of cane into sugar as one of the essentials) places the manufacture of the sugar in matter of the bounty scheme in a secondary position. In other words, in our view production was a first and manufacture a secondary consideration. Each, however, was essential in order to enable the producer to recover the bounty.' The conclusion of the court was that, as the cost of cultivation was about equal to the cost of manufacture, the heirs at law were entitled to one half of the bounty and Mrs. Allen the other half."

And in its own discussion of the case, the Court says:

"It is quite evident that Allen himself was not the producer of the sugar. He had planted the crop of cane upon his own plantation. He had given notice and bond to the Commissioner of Internal Revenue, and had applied for a license; but he had done nothing toward the production of the sugar at the

> time of his death beyond raising the cane, which certainly would not have entitled him to be considered a producer of the sugar."

From all of which, it appears that Allen himself was not the producer of the sugar, and it is very apparent that the only question presented and decided in that case was who was entitled to the government bounty. Yet, in its final analysis, the majority opinion in the instant case is founded on that decision.

Much more could be said. But suffice it to say that we are clearly of the opinion that each one of plaintiff's assignments of error is well taken and should be sustained, and that the judgment ought to be reversed, and for such reasons, we dissent.

CHARLES A. JOHNS

WE CONCUR:—

RAMON AVANCEÑA.

On the 13 day of February, 1928, the Clerk of the Court entered the following final judgment:

> "The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon

the record, its decision and order for judgment having been filed on the 2nd day of February, A. D., nineteen hundred and twenty-eight;

"By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 5th day of January, nineteen hundred and twenty-five, and from which the above-entitled appeal was taken, be and the same is hereby, affirmed with the costs against the appellant.

"It is further ordered that the appellee recover from the appellant the sum of ₱40.00, as costs.

(Sgd.) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

On February 13, 1928, counsel for plaintiff and appellant excepted to the decision rendered by the Supreme Court on the 2nd day of February, 1928, as well as to the final judgment entered, and gave notice of their intention to apply to the Supreme Court of the United States for a writ of certiorari for the review of said decision and judgment, and prayed for the stay of execution, which said excep-

tion and intention to apply for a writ of certiorari is in words and figures as follows, to- wit:

(HEADING AND TITLE)
EXCEPTION AND NOTICE OF APPEAL

Now comes the plaintiff in the above-entitled cause by its undersigned attorneys, and hereby excepts to the decision rendered by this Court on the 2nd day of February, 1928, in the above-entitled action and also excepts to the final judgment entered therein.

Notice is hereby given that the plaintiff intends to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court and said plaintiff hereby makes application for the retention of the record in said cause in this Court pending the preparation and certification of said record and the preparation of said petition to the Supreme of the United States.

The grounds, *inter alia*, upon which the plaintiff intends to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and

judgment of this Court herein above referred to are:

1. That the decision and judgment of this Court are contrary to the law and the evidence;

2. That in this action recovery is sought of an amount in excess of Twenty-five Thousand Dollars ($25,000.00);

3. That the decision rendered in this case has been made possible only by the concurrence *pro hac vice* of one of the members of this Court, such concurrence, however, having been made for the sole purpose of disposing of this case and of permitting the defeated party to appeal to the Supreme Court of the United States and obtain therefrom an official decision upon the merits of the case.

Plaintiff also prays for a stay of enforcement of the judgment in this case during the pendency of the application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

Manila, Philippine Islands, February 13, 1928.

PAREDES, BUENCAMINO & YULO
BY JOSE YULO
Attorneys for Plaintiff-Appellant
420 Pacific Building, Manila.

On February 14, 1928, the Supreme Court entered the following order:

> "Considering the motion of the attorneys for the plaintiff-appellant in case R. G. No. 23985, Pampanga Sugar Mills vs. Wenceslao Trinidad, etc., excepting to the decision heretofore rendered by this Court as well as to the final judgment entered therein, and giving notice of its intention to petition the Supreme Court of the United States for a writ of certiorari for the revision of said decision and judgment, and praying for a stay of enforcement of the judgment during the pendency of the application and of the proceedings to be had in the Supreme Court of the United States: Exception noted and the amount of the bond for the stay of the enforcement of judgment is hereby fixed at ₱1,000.00 to be filed with this Court within ten days from notice hereof and to be approved by Mr. Justice Ostrand, after hearing the defendant as to the solvency of its sureties."

On February 23, 1928, plaintiff filed with the Clerk's Office a supersedeas bond in the amount of ₱1,000.00 which was duly approved by Associate Justice James A. Ostrand.

United States of America
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

I, V. ALBERT, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing .....( ) printed pages contain a true and correct translation and transcript of the record of the case entitled Pampanga Sugar Mills, plaintiff and appellant, vs. Wenceslao Trinidad, Collector of Internal Revenue for the Philippine Islands, defendant and appellee, bearing No. 23985 of the General Register of this Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ..... day of May A. D. nineteen hundred and twenty-eight.

V. ALBERT
Clerk, Supreme Court of the Philippine Islands

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 22, 1928

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.